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8 Attorneys for Plaintiff NELSON MOLINA

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 NELSON MOLINA, an individual,

12 Plaintiff,

13 vs.

14 CITY OF SAN RAFAEL, a municipal
15 corporation, CHRISTOPHER COALE,
16 individually and in his official capacity as
17 a police officer, TWO UNNAMED
18 OFFICERS OF THE SAN RAFAEL
19 POLICE DEPARTMENT, in their
20 individual and official capacities,

21 Defendants.

Case No.: C-06-4742 PJH

STIPULATION TO AMEND
COMPLAINT AND ORDER
THEREON

- 22
- 23 1. WHEREAS Plaintiff filed his Complaint in this matter on August 4, 2006,
- 24 naming Two Unnamed Police Officers of the San Rafael Police Department as
- 25 Defendants;
- 26 2. WHEREAS Plaintiff has discovered the name and identity of one of the
- 27 Unnamed Officers;
- 28

STIPULATION TO AMEND AND ORDER THEREON
Molina v. City of San Rafael, C-06-4742-PJH

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- 2
- 3 3. WHEREAS Plaintiff has determined that the Complaint should therefore be
- 4 amended to add the name and identity of the Unnamed Officer;
- 5
- 6 4. WHEREAS Defendants have consented to Plaintiff amending his Complaint;

7 THEREFORE the parties hereby stipulate to the filing of the Amended

8 Complaint attached hereto as Exhibit A.

9 SO STIPULATED.

10 Dated: February 21, 2007.

Dated: February 21, 2007.

11 MAKOFFS, LLP

BERTRAND, FOX & ELLIOT

12 By: Charlotte N. Makoff

13 By: Thomas F. Bertrand

14 Charlotte N. Makoff, Esq.
15 Attorney for Plaintiff

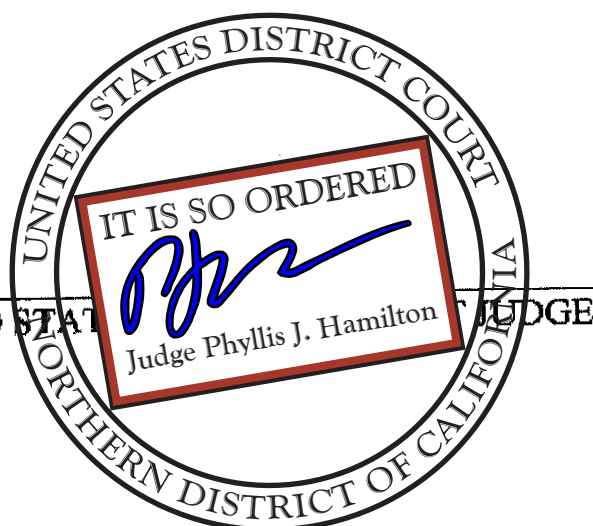
16 Thomas F. Bertrand
17 Richard W. Osman
18 Attorneys for Defendants

19 **ORDER**

20 Good cause appearing, IT IS SO ORDERED.

21 Dated: 3/2/07

22 UNITED STATES



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STIPULATION TO AMEND AND ORDER THEREON
Molina v. City of San Rafael, C-06-4742-PJH

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6 Nelson Molina

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12
13 NELSON MOLINA, an individual,
14 Plaintiff,
15 vs.

16 CITY OF SAN RAFAEL, a
17 municipal corporation,
18 CHRISTOPHER COALE,
19 individually and in his
20 official capacity as a police
21 officer, TWO UNNAMED OFFICERS
22 OF THE SAN RAFAEL POLICE
23 DEPARTMENT, in their
individual and official
capacities,
Defendants.

Case No. C 06-4742 PJH

[PROPOSED] AMENDED
COMPLAINT FOR
DAMAGES:

- (1) 42 U.S.C. § 1983
(2) Battery
(3) Assault
(4) Intentional
Infliction of
Emotional Distress
(5) Negligence

DEMAND FOR JURY TRIAL

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28 [PROPOSED] AMENDED COMPLAINT
Molina v. City of San Rafael C-06-4742-PJH

COMPLAINT

1. This is a civil action arising under 42 U.S.C. § 1983 for violation of Plaintiff's 4th Amendment rights and an action for state law causes of action for assault and battery, intentional infliction of emotional distress and negligence.

2. Plaintiff seeks compensatory and punitive damages under 42 U.S.C. § 1983, compensatory and punitive damages for common law causes of action, and reasonable attorney's fees under 42 U.S.C. § 1988 and state law.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331, 1343(a)(3), (4).

4. This Court may also exercise supplemental jurisdiction over the plaintiff's state law claims that arise from the same facts and circumstances under 28 U.S.C. § 1367.

5. Venue is proper in the Northern District of California because the defendants, or some of them, reside, do business and have agents in this District, all or a substantial part of the events or omissions giving rise to the claims occurred in this District, and the defendants are subject to personal jurisdiction in this District.

- 2 -

[PROPOSED] AMENDED COMPLAINT
Molina v. City of San Rafael C-06-4742-PJH

PARTIES

6. Plaintiff is a resident of Novato, California, and at all times relevant to this complaint a resident of Marin County.

7. Plaintiff alleges that at all times material times hereto, the City of San Rafael is and was a municipal Corporation under the Constitution of the State of California. Plaintiff alleges that Defendant City of San Rafael, pursuant to statutes and laws promulgated by the State of California, provides law enforcement through the San Rafael Police Department purportedly to protect and serve persons within the City of San Rafael.

8. At all times relevant to this action, defendant Sergeant Christopher Coale was a police officer employed by the City of San Rafael Police Department to perform duties in the City of San Rafael and on December 26th was assigned to the Canal District in San Rafael.

a. At all relevant times, defendant Coale was acting as the agent, servant, and employee of the Defendant City of San Rafael Police Department.

b. Defendant Coale is sued individually and in his official capacity.

9. At all times relevant to this action, Defendant David Casalnuovo was a police officer

1 employed by the City of San Rafael Police Department
2 to perform duties in the City of San Rafael and on
3 December 26th was assigned to the Canal District in San
4 Rafael.

5 a. At all relevant times, defendant Casalnuovo
6 was acting as the agent, servant, and employee of the
7 Defendant City of San Rafael Police Department.

8 b. Defendant Casalnuovo is sued individually and
9 in his official capacity.

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11 10. At all relevant times and in all their
12 actions, defendant Casalnuovo was acting under color
13 of law and pursuant to their authority as police
14 personnel.

15
16 FACTUAL ALLEGATIONS

17 11. On or about December 25, 2005, plaintiff
18 Nelson Molina lived in a single bedroom in a two
19 bedroom rental apartment in the Canal District of San
20 Rafael. At approximately 1:00 a.m. on December 26th,
21 Mr. Molina was in his own room alone on his bed,
22 wearing only brief underpants. The surrounding area
23 was noisy, and Mr. Molina was finding it difficult to
24 fall asleep. His bedroom door was locked and he had
25 his television on. Sometime between 1:00 a.m. and
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1 4:00 a.m., Mr. Molina heard a lot of screaming and
2 yelling in the other rooms in the apartment.

3 12. At this point in time, Mr. Molina heard
4 someone trying to force open his bedroom door. Mr.
5 Molina got up out of the bed and asked, "Who is it?"
6 The answer was something to the effect of "Police,
7 open the door," and "if you don't open the door we
8 will force it open." Mr. Molina was relieved that it
9 was the Police at the door.

10 13. Wearing only men's briefs, Mr. Molina got out
11 of his bed and unlatched the door. Defendant Officer
12 Casalnuovo asked Mr. Molina to show his hands, which
13 he did. Three officers entered his small room with
14 their guns drawn and pointed at his face. Mr. Molina
15 pleaded with the officers, "Don't shoot." One of the
16 police officers asked how many other persons or gang
17 members were in the room. Mr. Molina responded that
18 it was only him, that he was only a tenant and that he
19 had nothing to do with the others in the apartment.
20 One of the police officers yelled profanities at Mr.
21 Molina and told him to shut up.

22 14. Defendant David Casalnuovo stepped forward,
23 grabbed one of Mr. Molina's arms and threw him to the
24 floor. Mr. Molina then pleaded that he had previously
25 injured his back and that they should be gentle. His
26 requests regarding his back were ignored. As Mr.
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1 Molina lay upon the floor face down in his bedroom,
2 obviously unarmed and wearing only underpants.
3 Defendant Casalnuovo placed either his knee or his
4 foot on Mr. Molina's lower back and grabbed Mr.
5 Molina's arm to handcuff his wrist. There was no
6 reason to handcuff Mr. Molina or to use any force.
7 Mr. Molina writhed in unbearable pain. He screamed
8 out that his back hurt. The same officer then placed
9 his second knee or foot on Mr. Molina's back and
10 pressed hard and grabbed Mr. Molina's other wrist for
11 handcuffing. At that point Mr. Molina heard something
12 within his back crack. Mr. Molina, who had been
13 nursing an already injured back, was in more pain than
14 he experienced in his entire life. The officer
15 grabbed the handcuffs behind Mr. Molina's back and
16 ordered him to stand up and walk to the living room
17 area of the apartment. When the officer lifted up Mr.
18 Molina by his handcuffs his back experienced even more
19 pain. Mr. Molina's pain was so excruciating he could
20 barely stand up, let alone walk. With great difficulty
21 he made steps into the living room.

22 15. Once in the living room Mr. Molina was pushed
23 down to the floor again and was forced to lie face
24 down.

25 16. Mr. Molina complained that he was in great
26 pain. He was told to shut-up. While handcuffed on
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1 the floor and in great pain, two officers continued to
2 point guns at Mr. Molina. One of the officers asked
3 for everyone's name. Mr. Molina volunteered to
4 translate for other young men in the room who did not
5 speak English. At this point, defendant Sergeant
6 Christopher Coale allowed Mr. Molina to sit in a chair
7 in the dining room. Mr. Molina was in such great pain
8 that he could not stand up. Two of the officers
9 assisted Mr. Molina to stand. His handcuffs were
10 removed and he was walked to a chair in the dining
11 room.

12 17. After asking Mr. Molina a number of questions
13 two officers escorted him to his bedroom as he could
14 not walk and was still writhing in pain.

15 18. A few hours later Mr. Molina woke up in a
16 great deal of pain. He continued with pain
17 medication, but the back pain did not subside. He was
18 unemployed and had no way to pay for medical care. He
19 stayed in his rented room for several weeks. When the
20 pain in his back became so great that he could no
21 longer bear it without screaming in pain, Mr. Molina
22 went to Marin General Hospital's Emergency Room.
23 After several visits to the Emergency Room, each time
24 for extreme pain, Mr. Molina was diagnosed with a
25 broken back and was told by doctors that he needed
26 surgery.

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1 19. As a result of the conduct described above in
2 this complaint, Mr. Molina has become completely
3 disabled. He is now unable even to walk across a room
4 without assistance. He must uses a walker or a cane.
5 He requires constant medical treatment.

6 20. Defendant Christopher Coale authorized and
7 tolerated and ratified the misconduct detailed above
8 by failing to properly discipline, restrict and
9 control the officers at the scene, including David
10 Casalnuovo, both of whom used excessive force against
11 Mr. Molina and thereby caused great physical pain and
12 suffering to Mr. Molina.

13 STATE LAW THEORIES OF RECOVERY

14 21. Plaintiff incorporates herein by reference
15 each and every allegation set forth in Paragraphs 1-33
16 of the Complaint.

17 22. On March 27, 2006, the plaintiff caused a
18 written Notice of Claim For Money Damages Against the
19 City of San Rafael pursuant to Government Code §
20 911.2. A true and correct copy of the Claim For Money
21 Damages is attached to this Complaint and incorporated
22 by reference in it as Exhibit "A."

23 23. On June 13, 2006, Plaintiff's claim was
24 rejected in writing by the City of San Rafael. A true
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1 and correct copy of the Notice of Claim Rejection is
2 attached to this Complaint as Exhibit "B."

3 FIRST CLAIM FOR RELIEF

4 EXCESSIVE USE OF FORCE

5 [42 U.S.C. § 1983]

6 AGAINST ALL DEFENDANTS

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8 24. Plaintiff incorporates herein by reference
9 each and every allegation set forth in Paragraphs 1-23
10 of the Complaint.

11 25. Defendant David Casalnuovo used excessive
12 force in detaining Nelson Molina.

13 26. Mr. Molina was wearing only underwear, and
14 had his hands in the air did not pose a threat to the
15 safety of the officers in his apartment. Mr. Molina
16 did not resist or attempt to avoid being detained.

17 27. The force used by Officer Casalnuovo was
18 excessive.

19 28. David Casalnuovo was acting or purporting to
20 act in the performance of their official duties.

21 29. Plaintiff Nelson Molina was harmed.

22 30. The use of excessive force was a substantial
23 factor in causing Mr. Molina's harm.

1
2 SECOND CLAIM FOR RELIEF

3 EXCESSIVE USE OF FORCE

4 [42 U.S.C. § 1983]

5 AGAINST CHRISTOPHER COALE

6 31. Plaintiff incorporates herein by reference
7 each and every allegation set forth in Paragraphs 1-30
8 of the Complaint.

9 32. Defendant Christopher Coale is a sergeant with
10 the San Rafael Police Department. Defendant Coale was
11 on duty the night of the above alleged incident.
12 Coale was the supervisor in charge of defendant
13 Officer Casalnuovo and witnessed the excessive use of
14 force they used in detaining Mr. Molina.

15 33. Christopher Coale authorized, tolerated and
16 ratified the misconduct detailed above by failing to
17 properly discipline, restrict and control the officers
18 at the scene, including but not limited to David
19 Casalnuovo, who used excessive force against Mr.
20 Molina and thereby caused him to suffer great physical
21 pain and suffering.

1 THIRD CLAIM FOR RELIEF

2 BATTERY

3 AGAINST ALL DEFENDANTS

4 34. Plaintiff incorporates herein by reference
5 each and every allegation set forth in Paragraphs 1-33
6 of the Complaint.

7 35. Defendant David Casalnuovo intentionally
8 caused offensive contact to Mr. Molina's person
9 without consent or privilege.

10 36. On December 26th, David Casalnuovo
11 intentionally threw plaintiff to the floor and twice
12 intentionally stepped on Mr. Molina's back while
13 putting handcuffs on Mr. Molina. Mr. Molina did
14 nothing to provoke David Casalnuovo, was visibly
15 unarmed, made no attempt to leave and complied with
16 all of Officer Casalnuovo's requests. The conduct of
17 Cassalnuovo under the circumstances was an excessive
18 use of force without privilege.

19 37. Casalnuovo severely injured Mr. Molina's back,
20 resulting in extreme pain and discomfort, multiple
21 surgeries and permanent disability.

1 FOURTH CLAIM FOR RELIEF

2 ASSAULT

3 AGAINST ALL DEFENDANTS

4 38. Plaintiff incorporates herein by reference
5 each and every allegation set forth in Paragraphs 1-37
6 of the Complaint.

7 39. On December 26, 2005, Casalnuovo acted
8 intending to cause harmful contact to Mr. Molina.

9 40. Mr. Molina reasonably believed that the acts
10 of Casalnuovo would harm and hurt him, and he
11 requested that he be gentle to him as he had just
12 recovered from a back injury.

13 41. Mr. Molina did nothing to provoke Officer
14 Casalnuovo, was visibly unarmed, made no attempt to
15 leave and complied with all of the officers' requests.
16 The conduct of Officer Casalnuovo under the
17 circumstances was excessive and without Mr. Molina's
18 consent and without privilege.

19 42. Mr. Molina was harmed and severely injured.

20 43. The conduct of Officer Casalnuovo was a
21 substantial factor in causing Mr. Molina's harm.

FIFTH CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST ALL DEFENDANTS

44. Plaintiff incorporates herein by reference each and every allegation set forth in Paragraphs 1-43 of the Complaint.

45. Defendants' above-described conduct was extreme, unreasonable and outrageous. By engaging in such conduct, defendants intentionally ignored or recklessly disregarded the foreseeable risk that plaintiffs would suffer extreme emotional distress as a result of defendants' conduct.

46. As a proximate result of said conduct, Mr. Molina suffered severe emotional distress, pain and suffering, fear, anxiety, embarrassment, discomfort and humiliation, all to their general damage in an amount to be proven, and incurred special damages in an amount to be proven.

1 SIXTH CLAIM FOR RELIEF

2 NEGLIGENCE

3 AGAINST ALL DEFENDANTS

4 47. Plaintiff incorporates herein by reference
5 each and every allegation set forth in Paragraphs 1-46
6 of the Complaint.

7 48. Defendant City of San Rafael has and had a
8 duty to properly hire, train, oversee, supervise and
9 discipline police officers so as to prevent violations
10 of Mr. Molina's constitutional, statutory, and
11 common law rights and to prevent physical injury to
12 Mr. Molina, and a duty to follow police procedure to
13 avoid harm to Mr. Molina.

14 49. By the conduct described above, defendants
15 breached the duty of care owed to plaintiffs and
16 proximately caused them general and special damages in
17 an amount to be proven at trial.

18
19 PRAYER FOR RELIEF

20 WHEREFORE Nelson Molina prays for relief as
21 follows against the defendants, and each of them,
22 jointly and severally:

23 1. For general and compensatory damages according
24 to proof in an amount to be proven at trial;

1 2. For exemplary and punitive damages against all
2 defendants sued in their individual capacities in an
3 amount to be proven at trial.

4 3. For costs of suit, including reasonable
5 attorney's fees and expenses of litigation as provided
6 by 42 U.S.C. § 1983;

7 4. For such other relief as This Honorable Court
8 deems just and proper.

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12 Dated: February 21, 2006. MAKOFFS LLP

13
14 By: Charlotte Makoff
15 Charlotte N. Makoff
16 Attorneys for Plaintiff
17 NELSON MOLINA
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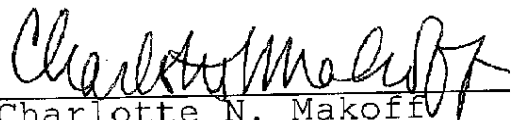
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues triable by jury as provided by Rule 38 of the Federal Rules of Civil Procedure.

DATED: AUGUST 4, 2006.

MAKOFFS LLP

By:


Charlotte N. Makoff
Attorneys for Plaintiff
NELSON MOLINA